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BY ECF & HAND DELIVERY

Honorable Lewis A. Kaplan  
 United States District Judge  
 Southern District of New York  
 500 Pearl Street  
 New York, NY 10007

October 31, 2024

Re: *In re Customs and Tax Administration of the United Kingdom of Denmark (Skatteforvaltningen) Tax Refund Scheme Litigation, 18-md-2865 (LAK)*<sup>1</sup>

Dear Judge Kaplan:

We write on behalf of plaintiff Skatteforvaltningen (“SKAT”) to submit a revised, proposed compensatory damages question for SKAT’s fraud, aiding and abetting fraud, and negligent misrepresentation claims for the special verdict form for the trial one cases (ECF No. 1197-1).

SKAT’s proposed damages questions for its fraud, aiding and abetting fraud, and negligent misrepresentation claims in the proposed special verdict form the parties submitted to the Court ask the jury, “what is the dollar amount of compensatory damages Plaintiff is entitled to receive from” the defendant? (See, e.g., ECF No. 1197-1 at 10.)<sup>2</sup> To avoid confusing the jury, SKAT proposes instead that the jury be asked, “What is the amount of the monetary loss SKAT sustained?”

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1. This letter relates to the Trial One cases: 18-cv-07828; 19-cv-01785; 19-cv-01867; 19-cv-01893; 19-cv-01781; 19-cv-01783; 19-cv-01866; 19-cv-01895; 19-cv-01794; 19-cv-01865; 19-cv-01904; 19-cv-01798; 19-cv-01869; 19-cv-01922; 19-cv-01800; 19-cv-01788; 19-cv-01870; 18-cv-07827; 19-cv-01791; 19-cv-01792; 19-cv-01928; 19-cv-01926; 19-cv-01868; 18-cv-07824; 19-cv-01929; 19-cv-01803; 19-cv-01806; 19-cv-01906; 19-cv-01801; 19-cv-01894; 19-cv-01808; 19-cv-01810; 19-cv-01809; 18-cv-04833; 19-cv-01911; 19-cv-01898; 19-cv-01812; 19-cv-01896; 19-cv-01871; 19-cv-01813; 19-cv-01930; 18-cv-07829; 18-cv-04434; 19-cv-01815; 19-cv-01818; 19-cv-01931; 19-cv-01918; 19-cv-01873; 19-cv-01924; 19-cv-10713; 21-cv-05339.
2. The Markowitz, van Merkensteijn and Klugman defendants proposed instead that the jury be asked, “what is the dollar amount of compensatory damages [the defendant] should be required to pay to Plaintiff?” (ECF No. 1197-1 at 13.) Similar to SKAT, defendant Michael Ben-Jacob proposed, “what is the dollar amount of damages Plaintiff is entitled to be paid by Michael Ben-Jacob?” (ECF No. 1196 at 23-24.)

SKAT's revised, proposed damages question is consistent with the New York Pattern Jury Instructions for fraud claims, which instruct the jury to "decide the actual monetary loss sustained," N.Y. Pattern Jury Instr.—Civil 3:20, and for negligent misrepresentation claims, which, adjusted for the context of these cases where SKAT received nothing of value from defendants, instruct the jury that it "must award" the amount plaintiff "paid," N.Y. Pattern Jury Instr.—Civil 3:21. SKAT's and defendants' previous proposals asking the jury to decide the amount to which SKAT is "entitled" or defendants "should be required to pay" may confuse the jury into thinking they are being asked to make an equitable determination of how much of its loss SKAT should recover (assuming the jury finds in favor of SKAT on liability), in lieu of determining SKAT's actual damages caused by the misrepresentations in the refund claims. To avoid any such misapprehension, SKAT proposes the jury simply be asked to set forth the amount of SKAT's loss in answering the questions, if necessary, of SKAT's damages for its fraud, aiding and abetting fraud, and negligent misrepresentation claims.

SKAT proposed its revised damages question to defendants. Defendants did not agree and continue to propose the damages questions set forth in the proposed special verdict forms submitted on September 20, 2024 (ECF Nos. 1196, 1197-1).

Respectfully submitted,

/s/ Marc A. Weinstein  
Marc A. Weinstein

cc: all counsel of record (via ECF)